

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

# EMPIRE FIRE AND MARINE INSURANCE COMPANY.

Case No. 2:21-CV-289 JCM (EJY)

## ORDER

**Plaintiff(s),**

V.

NICOLE ELYSE BROOKS, et al.,

Defendant(s).

Presently before the court is a motion for reconsideration filed by defendants Jose A. Rodriguez, Jacob Ramirez, and Jose Luis Tello-Robles (hereinafter “claimants”). (ECF No. 36). Plaintiff Empire Fire and Marine Insurance Company filed a response (ECF No. 37), to which the claimants replied (ECF No. 36).

The claimants made several additional filings: a “motion for leave to file supplement to motion for reconsideration” (ECF No. 39); a “motion for leave to file second supplement to motion for reconsideration” (ECF No. 42); an “amended motion for leave to file second supplement to motion for reconsideration” (ECF No. 43); and a “second supplement to motion for reconsideration” (ECF No. 44).

For the reasons set forth below, the court denies the claimant's motion for reconsideration and first motion to supplement. The court strikes the claimant's remaining filings.

## I. Background

This is an insurance dispute case. Plaintiff Empire Fire and Marine Insurance Company seeks a declaration from the court that it has no duty to indemnify the defendants in the underlying state action involving a car crash. (ECF No. 1, at 3). The allegations are as follows.

1           Defendant Nicole Brooks was driving a rental car when she crashed into the claimants' 2 vehicle. (*Id.* at 2). Brooks had purchased from Empire an insurance policy for the rental car. (*Id.*). 3 The Empire insurance policy covered certain losses resulting from accidents but excluded losses 4 incurred by intentional and/or criminal acts. (*Id.*). Empire's investigation into the car crash 5 revealed that Brooks and the claimants may have staged the crash. (*Id.*).

6           The claimants filed suit against Brooks and Empire in state court, seeking damages 7 incurred in the crash. (*Id.*). Empire then initiated *this* action to indemnify itself against Brooks 8 and the claimants, arguing that the car crash was excluded from the policy's coverage. (*Id.* at 3). 9 After several unsuccessful attempts at affecting service of process on Brooks, Empire moved for 10 leave to serve Brooks by publication. (ECF No. 13). The motion was granted, and Empire served 11 Brooks by publication. (ECF No. 14). Empire's counsel also mailed and emailed a copy of the 12 complaint and summons to Brooks and corresponded with her regarding the consequences of 13 failing to appear in this case. (ECF No. 26-1).

14           Brooks never appeared in this case and a clerk's default was entered. (ECF No. 17). 15 Empire then moved this court for default judgment against her. (ECF No. 26). The claimants 16 opposed that motion and filed two supplements to their opposition *before* requesting leave to 17 supplement. (ECF Nos. 27, 29, 31, 33). This court granted default judgment after considering the 18 claimants' two supplements. (ECF No. 34, at 4). The claimants now seek reconsideration of this 19 court's default judgment order. (ECF No. 36).

## 20           **II. Defendants' Motion for Reconsideration**

### 21           A. Legal Standard

22           Rule 59(e) "permits a district court to reconsider and amend a previous order[;]" however, 23 "the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and 24 conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) 25 (internal quotations omitted). A motion for reconsideration "should not be granted, absent highly 26 unusual circumstances." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).

27           On one hand, a motion for reconsideration "may not be used to raise arguments or present 28 evidence for the first time when they could reasonably have been raised earlier in the litigation."

1        *Kona Enters., Inc.*, 229 F.3d at 890. On the other hand, “[a] movant must not repeat arguments  
 2 already presented unless (and only to the extent) necessary to explain controlling, intervening law  
 3 or to argue new facts. A movant who repeats arguments will be subject to appropriate sanctions.”  
 4 LR 59-1(b).

5        Thus, the Ninth Circuit has provided that “[r]econsideration is appropriate if the district  
 6 court (1) is presented with newly discovered evidence, (2) committed clear error or the initial  
 7 decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School*  
 8 *Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); FED. R. CIV. P. 60(b). “A motion  
 9 to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”  
 10 FED. R. CIV. P. 59(e).

11        **B. Discussion**

12        The claimants first argue that reconsideration is appropriate because this court did not rule  
 13 on their motion to supplement their opposition to default judgment before ordering default  
 14 judgment. (ECF No. 36, at 5–6). The supplements contain Brooks’s discovery responses in the  
 15 underlying state case, which claimants contend disclose Brooks’s cooperation with Empire and  
 16 her ability to be located for proper service of process. (ECF No. 29, at 3; ECF No. 31, at 3).

17        But this argument is unavailing because the court *did* consider the claimants’ supplements  
 18 and ruled that default judgment was nonetheless appropriate. The court provides its reasoning  
 19 again, from its previous order:

20        **Despite defendants’ lack of proper filing procedure, the court**  
 21 **nevertheless considers the substance of defendants’ first and**  
 22 **second supplements.** Defendants contend that because Brooks is  
 23 participating in the state proceedings, default judgment in this court  
 24 is improper. The court disagrees. Participation in a state proceeding  
 25 does not affect whether Brooks has appeared or participated in the  
 26 instant action....

27        Defendants’ response cites no legal authority and focuses on  
 28 plaintiff allegedly failing to make adequate efforts to gain contact.  
 (ECF No. 27). However, defendants failed to consider that plaintiff  
 satisfied the requirements of service under FRCP 4(e)(1) and  
 Nevada Rules of Civil Procedure 4(d)(3). Brooks shows no intention  
 of attending trial, complying with any court orders, or cooperating  
 in any way to help resolve the case after numerous attempts to serve  
 her with the summons and complaint. Therefore, if plaintiff’s

1 motion for default judgment is not granted, plaintiff “will likely be  
 2 without other recourse.” *PepsiCo, Inc. v. Cal. Security Cans*, 283  
 F. Supp.2d 1127, 1177 (C.D. Cal. 2002).

3 (ECF No. 34, at 4) (emphasis added).

4 The claimants are attempting to litigate this issue once more by arguing that default  
 5 judgment should not have been granted because it was not supported by proper service of process.  
 6 Although service by publication is disfavored, it is a valid method for service of process when the  
 7 defendant cannot be found with due diligence or is evading service. *See Price v. Dunn*, 787 P.2d  
 8 785, 786 (1990). Claimants contend that Brooks was served improperly by publication because  
 9 Empire could have found her easily by contacting her attorneys in the underlying state action.  
 10 (ECF No. 36, at 6–7). The court disagrees.

11 The claimants have not met their burden on a motion for reconsideration. The court  
 12 reminds the claimants that it will not reconsider or amend its previous order unless it “(1) is  
 13 presented with newly discovered evidence, (2) committed clear error or the initial decision was  
 14 manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J*,  
 15 5 F.3d at 1263. Claimants merely raise the same arguments the court has already considered,  
 16 providing the court with no new evidence or change in controlling law. But the court will  
 17 nevertheless address the claimants’ arguments again, in order to demonstrate that no clear error or  
 18 manifest injustice was committed in the initial decision.

19 Despite the claimants’ claims to the contrary, Empire has never represented to the court  
 20 that it was unable to *contact* Brooks. Empire moved for service by publication because Brooks  
 21 was aware of this instant action and appeared to be actively evading service. (*See generally* ECF  
 22 No. 13). Empire had no reason to go through Brooks’s attorneys because it was in direct contact  
 23 with her regarding the instant action. (*Id.* at 2–3). Empire attempted to serve Brooks—  
 24 repeatedly—at an address she had previously given as her residence. (*Id.* at 2). After several calls,  
 25 Brooks refused to give Empire an updated address and even sent Empire’s investigator on a goose  
 26 chase in a different state. (*Id.* at 3).

27 The court recounts Empire’s efforts here: Empire hired an investigator to locate Brooks;  
 28 Empire attempted to serve Brooks at several different addresses in at least three different states;

1 the investigator performed three “skip-trace” searches on Brooks; the investigator emailed and  
 2 spoke with Brooks on the phone; and the investigator attempted to set up a meeting with Brooks,  
 3 which she evaded. (*Id.*). Based on these efforts, the court found that Brooks could not be served  
 4 by any other means and granted Empire’s request to serve by publication. (ECF No. 14).  
 5 Claimants have yet to provide the court with binding authority to find otherwise.

6 Finally, to the extent that the claimants are arguing that Empire could have served Brooks  
 7 by serving her attorneys in the underlying state action—they have never provided the court with  
 8 legal authority to support this contention. It is not up to the court to conduct legal research on  
 9 behalf of the claimants regarding whether service of process on a party’s attorneys in another  
 10 action satisfies the service requirements in the instant action. *Couturier v. Am. Invscor Corp.*, No.  
 11 2:12-cv-01104-APG-NJK, 2013 WL 4499008, at \*3 (D. Nev. Aug. 20, 2013) (“A judge is the  
 12 impartial umpire of legal battles, not a party’s attorney. He is neither required to hunt down  
 13 arguments the parties keep camouflaged, nor required to address perfunctory and undeveloped  
 14 arguments.”). The motion for reconsideration is denied.

### 15 **III. Claimants’ Motions to Supplement**

16 The claimants filed multiple, successive motions to supplement their motion for  
 17 reconsideration. (ECF Nos. 39, 42, 43, 44). Each successive document merely adds additional  
 18 discovery responses or actions by Brooks in the underlying state case, in an attempt to convince  
 19 this court that default judgment should not have been granted in *this* case. The motions contain  
 20 largely the same perfunctory—and barely sufficient—points and authorities.

21 Addressing the claimants’ first motion to supplement (ECF No. 39)—supplemental briefs  
 22 may be filed only upon a showing of good cause, and only with leave of court. LR 7-2(g). Good  
 23 cause might exist where “the proffered supplemental authority controls the outcome of the  
 24 litigation, or when the proffered supplemental authority is precedential, or particularly persuasive  
 25 or helpful.” *Hunt v. Washoe Cnty. Sch. Dist.*, No. 3:18-CV-501-LRH-WGC, 2019 WL 4262510,  
 26 at \*3 (D. Nev. Sept. 9, 2019). This is now the second time that the court must explain to the  
 27 claimants that Brooks’s actions in the underlying state case are irrelevant to whether she defaulted  
 28

1 in *this* case. Good cause to supplement does not exist here, and the court must deny the claimants'  
 2 request.

3 Addressing the claimants' second motion to supplement (ECF No. 42), their amended  
 4 second motion to supplement (ECF No. 43), and their second supplement (ECF No. 44)—these  
 5 motions not only run afoul of the court's local rules<sup>1</sup> but are meritless and duplicative of the  
 6 claimants' earlier motions to supplement. The claimants have, in total, made seven filings on the  
 7 court's docket that are not only procedurally improper but redundant.<sup>2</sup> (ECF Nos. 29, 31, 33, 39,  
 8 42, 43, 44).

9 The district courts have inherent authority to control their dockets and to "achieve the  
 10 orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991).  
 11 This inherent authority gives district courts the power to strike redundant and immaterial filings  
 12 from the docket. *E.g., Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010)  
 13 (explaining that district courts have inherent authority to "strike items from the docket as a sanction  
 14 for litigation conduct"). The court exercises this power and strikes the claimants' improper and  
 15 redundant filings. (ECF Nos. 42, 43, 44).

16 Finally, the court cautions the claimants that it may impose sanctions, including an order  
 17 to pay the opposing party's costs and fees, if they continue to submit frivolous or abusive filings.  
 18 *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001) (explaining that a district court has inherent  
 19 power to levy sanctions when the losing party has "acted in bad faith, vexatiously, wantonly, or  
 20 for oppressive reasons" (citations omitted)); *Gomez v. Vernon*, 255 F.3d 1118, 1134–35 (9th Cir.  
 21 2001) (explaining that district courts also have authority to impose sanctions under 28 U.S.C. §  
 22 1927 when an attorney "unreasonably and vexatiously multiplies proceedings" (citations  
 23 omitted)); *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (explaining  
 24 that a court may impose sanction under Federal Rule of Civil Procedure 11 if a filed paper is  
 25  
 26

---

27       <sup>1</sup> LR 7-2(g) prohibits supplementation without leave of court.

28       <sup>2</sup> Although each supplement provides evidence of different actions taken by Brooks in the  
 underlying state case, they all repeat the same argument against default judgment in this case.

1 frivolous); LR IA 11-8 (court may impose sanctions for failure to comply with the local rules or  
2 any order of the court).

3 **IV. Conclusion**

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the claimants' motion for  
6 reconsideration (ECF No. 36) be, and the same hereby is, DENIED.

7 IT IS FURTHER ORDERED that the claimant's first motion to supplement (ECF No. 39)  
8 be, and the same hereby is, DENIED.

9 IT IS FURTHER ORDERED that the claimants' remaining filings (ECF Nos. 42, 43, 44)  
10 be STRICKEN from the docket.

11 DATED February 23, 2024.

12   
13 UNITED STATES DISTRICT JUDGE

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28